



# **MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN Excise Tax Bulletin #1**

---

## **SPECIAL FUEL TAX**

---

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by those involved in sales of motor fuels, specifically special fuels. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Gasoline Excise Tax Law is found in Chapter 459 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

Special fuel is defined as distillates and low-energy fuel. An excise tax is levied and imposed on all suppliers of distillates sold, on all retailers of low-energy fuel sold and on all users of special fuel used in this State. The tax is a levy on the ultimate consumer; however suppliers and retailers are primarily responsible for collecting and remitting the tax. If a supplier or retailer includes the tax on a bill to a customer, it must be shown as a separate line item and identified as “Maine special fuel tax.” All Special Fuel Suppliers and Low-Energy Fuel Retailers doing business in this State must apply for a certificate with the State Tax Assessor. A copy of the Special Fuel Supplier or Special Fuel Retailer certificate must be displayed in each place of business.

### **1. DEFINITIONS**

Distillates. All combustible gases and liquids used in an internal combustion engine, including bio-diesel fuel, except the fuel subject to the tax imposed by chapter 451 (gasoline tax) and low-energy fuel. Examples are diesel fuel, #2 fuel oil, and kerosene.

Low-energy fuel. Any fuel used to propel vehicles powered by an internal combustion engine that has 90% or less of the energy potential of an equivalent volume of gasoline. Energy potential is determined by the number of BTUs in a standard volume. Examples are propane, natural gas, and alcohol fuels.

Dyed fuel. A distillate that is dyed pursuant to the requirements of the Federal Government. “Dyed fuel” includes (off-highway) diesel fuel and kerosene.

## 2. SUPPLIERS

A *supplier* is defined as any person:

- importing distillates into this State,
- exporting distillates from this State,
- producing, refining, manufacturing, or compounding distillates within this State, **or**
- purchasing distillates within this State principally for resale to others in bulk.

*Licensed suppliers* may purchase special fuel for resale free from excise tax. Monthly returns are required to be filed with Maine Revenue Services stating the gross gallons of clear distillates received, sold, and used in this State during the prior month. Excise tax is due on each gallon reported as taxable at the time the monthly return is filed. **Transactions must be reported in the month they occur, not when they are billed.**

Withdrawals of distillates from inventory for a person's own use must be reported as a taxable sale, unless the use is covered by one of the exemptions detailed in Section 6 below.

*Registered suppliers* may only make sales of special fuel that is either not subject to the special fuels excise tax or of fuel that has been purchased excise tax paid. A common example of a registered supplier is a home heating oil dealer. Registered suppliers do not have a reporting requirement with Maine Revenue Services, but are still required to maintain records accounting for purchases and sales for a period of at least six years.

## 3. RETAILERS

A *retailer* is defined as any person purchasing low-energy fuel principally for resale directly into the fuel tank of a motor vehicle. Monthly returns are required to be filed with Maine Revenue Services stating the gross gallons of low-energy fuel received, sold, and used in this State during the prior month. Excise tax is due on each gallon reported as taxable at the time the monthly return is filed. **Transactions must be reported in the month they occur, not when they are billed.**

## 4. SPECIAL FUEL USER

A *special fuel user* is defined as any person who is the registered owner or who causes the operation in this State of any motor vehicle that uses special fuel in an internal combustion engine that a) has a gross vehicle weight or combined gross vehicle weight of more than 26,000 pounds; or b) has 3 or more axles on the power unit regardless of gross weight; or c) is a bus designed to carry 20 or more passengers. Quarterly returns are required to be filed with Maine Revenue Services stating the total gallons of fuels used within the State during the reporting period. The excise tax due on each gallon reported as taxable is due at the time the return is filed. Any user of special fuel operating exclusively within the State and using only special fuel purchased within the State, upon which the State has received the special fuel tax, may be exempted, at the discretion of the State Tax Assessor, from filing returns.

A person who receives any special fuel under any circumstances in which the excise tax was not collected by the supplier or retailer is liable for reporting and paying the excise tax on any sale or use of that fuel.

## **5. DELIVERY BY SUPPLIER OR RETAILER**

When distillates are delivered by a supplier to a consumer or to a retail outlet, the fuel is considered to have been sold, even if the retail outlet is owned in whole or in part by the supplier. The gallons should be reported on the monthly return as a taxable sale at the time the gallons are delivered into a retail tank.

## **6. EXEMPTIONS.** The following exemptions are provided by statute:

**a. Heating and cooking.** Special fuel delivered directly into a tank used solely for heating or cooking purposes is exempt from excise tax. This applies to both commercial and residential customers. Delivery slips and invoices which clearly indicate that the fuel is being used for heating or cooking are required as documentation to exempt these sales.

**b. Political subdivisions.** Special fuel sold in bulk to this State or any political subdivision of this State is exempt from excise tax. This exemption does not apply to sales to other states or provinces. Delivery slips and invoices which clearly indicate the purchaser as the State of Maine, an agency of this State, or a political subdivision of this State are required as documentation to exempt these sales. If an entity is questionable, the seller should obtain additional documentation to support the exemption. Sales to political subdivisions should be listed on Schedule 9 of the monthly tax return.

Retail sales of clear diesel to the State of Maine or any political subdivision of this State are subject to Maine excise tax. Entities making such purchases may file for a refund of the excise tax from Maine Revenue Services, subject to the provisions of the political subdivision refund application. The State or political subdivision may assign their right to a refund to a third party. The affidavit necessary to assign a refund is available on the MRS web site.

**c. Sales to the Federal Government.** Special fuel sold or used in such form or under such circumstances as precludes the collection of tax by reasons of federal law is exempt from excise tax. Delivery slips and invoices supporting sales to the U.S. Government are required as documentation to exempt such sales. Sales to the U.S. Government should be listed on Schedule 8 of the monthly tax return.

Retail sales of clear diesel to the U.S. Government are subject to Maine excise tax. Federal entities making such purchases may file for a refund of the excise tax from Maine Revenue Services, subject to the provisions of the political subdivision refund application.

**d. Sales for resale.** Sales of distillates sold to other licensed suppliers or sales of low-energy fuels to a licensed retailer for resale are exempt from excise tax. A copy of the purchasers "Licensed Special Fuel Supplier Certificate" or "Special Fuel Retailer Certificate" with the appropriate signed affidavit must be kept in the seller's file to document this exemption.

Exempt sales of clear distillates to other licensed suppliers should be listed on Schedule 6 of the monthly tax return.

Registered suppliers may only purchase dyed fuel or clear distillates upon which the Maine excise tax is paid at the time of purchase.

Maine Revenue Services provides a list of licensed special fuel suppliers on its web site [www.maine.gov/revenue/fueltax](http://www.maine.gov/revenue/fueltax).

**e. Exports.** Special fuel sold only for exportation from this State is exempt from excise tax. Delivery slips and invoices which clearly indicate the purchaser, point of origin, and destination are required to document these sales. Exports should be listed on Schedule 7 of the monthly tax return.

**f. Generation of power.** Special fuel sold to a person for the generation of power for resale or manufacturing is exempt from excise tax. A Special Fuel Users Affidavit of Exemption must be obtained and kept in the records of the seller to support these sales. Affidavits are valid until the purchaser ceases business or discontinues using the special fuel for which the exemption exists. It is recommended the seller periodically update its files. Sales for power generation should be listed on Schedule 10 of the monthly tax return.

Sales for the generation of power for manufacturing are subject to sales tax at the industrial energy rate. An Industrial Users Blanket Certificate of Exemption should be obtained from the purchaser in these situations.

**g. Kerosene for retail sale.** Kerosene prepackaged for home use or delivered into a separate tank for retail sale is exempt from excise tax. Excise tax must be remitted by licensed users rather than by the supplier. Special Fuel Suppliers selling clear kerosene for resale to a business not licensed as a Special Fuel Supplier must obtain a Special Fuel Users Affidavit of Exemption from the customer.

**h. Dyed fuel.** Generally dyed fuel is not reported on the special fuel supplier tax return. When distillates are purchased as clear fuel and ultimately disbursed or sold as dyed fuel or blended with dyed fuel, the sale or disbursement should be reported as a dyed fuel sale. Line clearing or flushing of clear diesel fuel into a dyed fuel tank is an example of when gallons should be reported under dyed fuel. Dyed fuel sales must be documented by delivery slips or invoices which clearly indicate the type of fuel. If fuel is re-branded from a clear product to a dyed product, document the circumstances which caused the re-branding.

**i. Self-produced biodiesel fuel.** Biodiesel fuel that is produced by an individual and used by the same individual or a member of that individual's immediate family is exempt from excise tax.

## **7. MONTHLY AND ANNUAL RETURNS**

All licensed suppliers and low-energy fuel retailers must file a monthly return listing receipts and disbursements from the prior month. The return is due on or before the last day of each month. Returns are supported by a variety of schedules and are considered incomplete if the applicable schedules are not attached. Tax returns are required to be filed even if a supplier or retailer has zero inventory or activity in a reporting period.

Licensed suppliers and retailers must also file an annual shrinkage return listing inventories, total receipts, and total sales. Annual returns are due by January 31st for the prior calendar year. (See Section 12 for additional information.)

Maine Revenue Services generates these returns and mails them in advance of the due date. Instructions and blank schedules are available from the Maine Revenue Services web site or by contacting Maine Revenue Services at the address listed below.

**Failure to receive a tax return does not excuse a supplier or retailer from the requirement to file returns as prescribed by law.** Penalties apply for failure to file returns timely.

## **8. REMITTANCE OF TAX**

Tax computed on the monthly return is due at the same time the return is due. Penalties apply for failure to pay tax timely.

Maine Revenue Services requires electronic funds transfer payments for many taxpayers. Information is available by clicking on electronic services from the Maine Revenue Services web page.

## **9. SALES TAX ISSUES**

Special fuel sold exempt from excise tax is subject to Maine sales and use tax. Exemptions from sales and use tax are contained within the Sales Tax portion of Title 36. Sales and Use Tax Instructional Bulletin #13 provides guidance on taxable and exempt fuel transactions. The Bulletin is available from the Sales and Use tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.

## **10. TAX RATES**

**Current excise tax rates are available on the Fuel Tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.**

A biodiesel blend containing less than 90% biodiesel fuel is taxed at the diesel fuel rate.

Beginning in 2003, the excise tax imposed on distillates and low-energy fuels was subject to an annual adjustment based on the consumer price index, with the tax rate change effective July 1st of each year. Indexing of motor fuels was repealed effective January 1, 2012.

## **11. ALLOWANCE FOR LOSSES (SHRINKAGE)**

An allowance may be made by the State Tax Assessor to cover the loss through shrinkage, evaporation or handling sustained by a supplier on the transportation of undyed diesel. The allowance cannot be more than  $\frac{1}{4}$  of 1% of the amount of undyed diesel received by a supplier, plus  $\frac{1}{4}$  of 1% on all transfers in vessels, tank cars or full tank truck loads by the supplier in the regular course of business from one of the supplier's places of business to another of the supplier's places of business within this State. The total allowance must be supported by documentation satisfactory to the Assessor. It is calculated on an annual (calendar year) basis. Suppliers should not include gains or losses in reported sales figures on monthly special fuel supplier returns.

An allowance may be made by the Assessor to cover the loss through shrinkage, evaporation or handling sustained by a retailer on the transportation of propane received by the retailer. The total allowance cannot exceed 1% of the amount of propane received by the retailer.

Further allowances may be requested from the State Tax Assessor by submitting proof of a loss sustained through fire, accident or unavoidable calamity.

## **12. CANCELLATION OF REGISTRATION CERTIFICATES**

A licensed or registered special fuel supplier's and low-energy fuel retailer's certificate may be cancelled for:

- filing a false tax return;
- failing, refusing, or neglecting to file a required return;
- failure to pay the full amount of tax due on a return; or
- making sales of undyed fuels exempt from the excise tax as a registered special fuel Supplier; or
- failure to meet the statutory definition of a special fuel supplier

## **13. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common issues regarding the Excise Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**Maine Revenue Services  
Sales, Fuel & Special Tax Division  
PO Box 1060  
Augusta, Maine 04332-1060  
Tel: (207) 624-9609  
NexTalk: (888) 577-6690  
Fax: (207) 287-6628  
E-Mail: [fuel.tax@maine.gov](mailto:fuel.tax@maine.gov)  
[www.maine.gov/revenue/fueltax](http://www.maine.gov/revenue/fueltax)**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities.

**Issued: July 1, 1998**

**Last Revised: February 17, 2012**

**Printed under Appropriation 010-18F-0002-07**